

# EXHIBIT 5

## Vicky Romanenko

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**From:** Vicky Romanenko  
**Sent:** Saturday, February 18, 2017 11:47 AM  
**To:** 'Esshaki, Gene J.'; Steve Williams  
**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; Demetrius Lambrinos; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WShotzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie  
**Subject:** RE: Honda Objection

Your Honor,

The protections being sought for this data are significantly narrower than those already imposed and not objected to by End-Payers, for OEM vehicle pricing data, set forth in the Special Master's Order Regarding the Production of Certain Vehicle Pricing Information, Case No. 2:12-md-02311-MOB-MKM, Doc # 1579 (Filed 12/29/16). That order requires that OEM pricing data be produced as HIGHLY CONFIDENTIAL—EXPERTS' EYES ONLY and that "[m]aterials derived from and/or otherwise based on the OEM Vehicle Pricing Data shall be designated 'HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY and given the protections set forth for documents bearing that designation in the Protective Orders.'" *Id.* at paras. II(B)(1) and II(B)(5).

Further, the Order requires that "OEM Vehicle Pricing Documents may be quoted, referred to or attached to court filings, subject to the requirements of the Protective Orders." *Id.* at II(C)(5).

The data at issue here is the same type of data described in that Order—pricing data about specific vehicles.

The public filing of data showing what prices were paid for thousands of specific vehicles as recently as last year will undoubtedly severely impact Honda dealers. And the burden of continuing to fight about how that data can be used going forward and to monitor every filing on the docket will be extreme for small businesses, who do not have inside counsel or the resources to engage in ongoing disputes about this data.

Therefore, just as EPPs agreed to treat OEMs' pricing data about specific vehicles as Highly Confidential, it would make sense to do the same for this vehicle-specific dealership data, coming from one of these same OEMs. These dealerships should not be denied the protections the OEMs are receiving for the same type of data.

In response to Mr. Williams' question of this morning, the terms we propose, is that the dealers' data be treated as Highly Confidential under the protective order, filed under seal, not provided to anyone outside the litigation, not used outside the litigation, and not shown to any other dealerships or consumers.

We understand from their letters that these terms are acceptable to Earnhardt, Waikem and Turner. However, we believe that a letter needs to be sent to Antonino proposing the use of these protections, in lieu of foregoing production.

**From:** Esshaki, Gene J. [mailto:gjesshaki@abbottnicholson.com]

**Sent:** Friday, February 17, 2017 8:36 PM

**To:** Steve Williams; Vicky Romanenko

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WShotzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; 'Ciolino Dawn L.'; 'Daniel Purcell'; 'Raiter, Shawn'; 'Burks, Laurie'

**Subject:** RE: Honda Objection

I am the first position on this issue. If you do not concur in a joint position on a Confidentiality Approach then the matter must come before me in the first instance. How do Defendants want to proceed given this?

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Steve Williams <[SWilliams@cpmlegal.com](mailto:SWilliams@cpmlegal.com)>

Date: 2/17/17 7:09 PM (GMT-05:00)

To: "Esshaki, Gene J." <[gjesshaki@abbottnicholson.com](mailto:gjesshaki@abbottnicholson.com)>, Vicky Romanenko <[Vicky@cuneolaw.com](mailto:Vicky@cuneolaw.com)>

Cc: 'Jackie Taylor' <[jtaylor@dbcllp.com](mailto:jtaylor@dbcllp.com)>, 'Emily Luthy' <[Eluthy@dbcllp.com](mailto:Eluthy@dbcllp.com)>, 'Millicent Lundburg' <[mlundburg@dbcllp.com](mailto:mlundburg@dbcllp.com)>, "'rlinkin@dwmrlaw.com'" <[rlinkin@dwmrlaw.com](mailto:rlinkin@dwmrlaw.com)>, "'Ian A. Kanig'" <[IKanig@kvn.com](mailto:IKanig@kvn.com)>, "'Hemlock, Adam'" <[adam.hemlock@weil.com](mailto:adam.hemlock@weil.com)>, 'Ronnie Spiegel' <[ronnie@hbsslaw.com](mailto:ronnie@hbsslaw.com)>, 'Demetrius Lambrinos' <[DLambrinos@cpmlegal.com](mailto:DLambrinos@cpmlegal.com)>, "'AEllis@stblaw.com'" <[AEllis@stblaw.com](mailto:AEllis@stblaw.com)>, "'Patrick.Carome@wilmerhale.com'" <[Patrick.Carome@wilmerhale.com](mailto:Patrick.Carome@wilmerhale.com)>, 'Steven Cherry' <[Steven.Cherry@wilmerhale.com](mailto:Steven.Cherry@wilmerhale.com)>, "'klein@butzel.com'" <[klein@butzel.com](mailto:klein@butzel.com)>, "'Asmedley@winston.com'" <[Asmedley@winston.com](mailto:Asmedley@winston.com)>, "'Novison, Heather'" <[Heather.Novison@weil.com](mailto:Heather.Novison@weil.com)>, 'Trey Nicoud' <[TNicoud@gibsondunn.com](mailto:TNicoud@gibsondunn.com)>, "'JAmato@winston.com'" <[JAmato@winston.com](mailto:JAmato@winston.com)>, "'WShotzbarger@duanemorris.com'" <[WShotzbarger@duanemorris.com](mailto:WShotzbarger@duanemorris.com)>, "'heather.choi@bakerbotts.com'" <[heather.choi@bakerbotts.com](mailto:heather.choi@bakerbotts.com)>, 'Sloane Kuney Rosenthal' <[SRosenthal@gibsondunn.com](mailto:SRosenthal@gibsondunn.com)>, Evelyn Li <[evelyn@cuneolaw.com](mailto:evelyn@cuneolaw.com)>, "'Jill S. Casselman'" <[JCasselman@RobinsKaplan.com](mailto:JCasselman@RobinsKaplan.com)>, "'Bonk, Cameron'" <[Cameron.Bonk@weil.com](mailto:Cameron.Bonk@weil.com)>, 'Bradley Love' <[Bradley.Love@btlaw.com](mailto:Bradley.Love@btlaw.com)>, "'Elliot.Weingarten@stblaw.com'" <[Elliot.Weingarten@stblaw.com](mailto:Elliot.Weingarten@stblaw.com)>, "'Justina K. Sessions'" <[JSessions@kvn.com](mailto:JSessions@kvn.com)>, "'Trager, Lara'" <[Lara.Trager@weil.com](mailto:Lara.Trager@weil.com)>, "Ciolino Dawn L." <[dlciolino@abbottnicholson.com](mailto:dlciolino@abbottnicholson.com)>, 'Daniel Purcell' <[DPurcell@KVN.com](mailto:DPurcell@KVN.com)>, "Raiter, Shawn" <[sraiter@larsonking.com](mailto:sraiter@larsonking.com)>, "Burks, Laurie" <[lburks@larsonking.com](mailto:lburks@larsonking.com)>

Subject: RE: Honda Objection

Your Honor

On consideration, End-Payers do not believe that this will resolve the issue. While it is true that some of the materials that are at issue may be subject to designations of confidentiality, we do not believe that the Court or the Parties should be advising these four automotive dealers that the information at issue will, for all time, be subject to the highest level of protection under the Protective Order and never be part of any court filing. The Protective Order sets forth how things produced in discovery may be designated, while *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6<sup>th</sup> Cir. 2016) governs the standards applicable to sealing court records. *Shane* sets forth very strict limitations on sealing court files, particularly in class actions. While it might be true that none of the matters at issue in the objections that these four automotive dealers have made will ever be filed publicly, in End-Payer's view this is not a certainty and we would be either (1) misleading these four automotive dealers by making the representations suggested below or (2)

unfairly and prejudicially restricting the parties' ability to use the materials at issue in this litigation if such a commitment were made to these four automotive dealers.

End-Payers continue to believe that the appropriate manner of dealing with this issue is by having End-Payers and Defendants file their responses to the four automotive dealer's objections to Your Honor's Orders so that Judge Battani can resolve those objections.

---

**From:** Esshaki, Gene J. [<mailto:gjesshaki@abbottnicholson.com>]

**Sent:** Friday, February 17, 2017 10:40 AM

**To:** Vicky Romanenko <[Vicky@cuneolaw.com](mailto:Vicky@cuneolaw.com)>

**Cc:** 'Jackie Taylor' <[jtaylor@dbcllp.com](mailto:jtaylor@dbcllp.com)>; 'Emily Luthy' <[Eluthy@dbcllp.com](mailto:Eluthy@dbcllp.com)>; 'Millicent Lundburg' <[mlundburg@dbcllp.com](mailto:mlundburg@dbcllp.com)>; 'rlinkin@dwmrlaw.com' <[rlinkin@dwmrlaw.com](mailto:rlinkin@dwmrlaw.com)>; 'Ian A. Kanig' <[IKanig@kvn.com](mailto:IKanig@kvn.com)>; 'Hemlock, Adam' <[adam.hemlock@weil.com](mailto:adam.hemlock@weil.com)>; 'Ronnie Spiegel' <[ronnie@hbsslw.com](mailto:ronnie@hbsslw.com)>; Demetrius Lambrinos <[DLambrinos@cpmlegal.com](mailto:DLambrinos@cpmlegal.com)>; Steve Williams <[SWilliams@cpmlegal.com](mailto:SWilliams@cpmlegal.com)>; 'AEllis@stblaw.com' <[AEllis@stblaw.com](mailto:AEllis@stblaw.com)>; 'Patrick.Carome@wilmerhale.com' <[Patrick.Carome@wilmerhale.com](mailto:Patrick.Carome@wilmerhale.com)>; 'Steven Cherry' <[Steven.Cherry@wilmerhale.com](mailto:Steven.Cherry@wilmerhale.com)>; 'klein@butzel.com' <[klein@butzel.com](mailto:klein@butzel.com)>; 'Asmedley@winston.com' <[Asmedley@winston.com](mailto:Asmedley@winston.com)>; 'Novison, Heather' <[Heather.Novison@weil.com](mailto:Heather.Novison@weil.com)>; 'Trey Nicoud' <[TNicoud@gibsondunn.com](mailto:TNicoud@gibsondunn.com)>; 'JAmato@winston.com' <[JAmato@winston.com](mailto:JAmato@winston.com)>; 'WShotzbarger@duanemorris.com' <[WShotzbarger@duanemorris.com](mailto:WShotzbarger@duanemorris.com)>; 'heather.choi@bakerbotts.com' <[heather.choi@bakerbotts.com](mailto:heather.choi@bakerbotts.com)>; 'Sloane Kuney Rosenthal' <[SRosenthal@gibsondunn.com](mailto:SRosenthal@gibsondunn.com)>; Evelyn Li <[evelyn@cuneolaw.com](mailto:evelyn@cuneolaw.com)>; 'Jill S. Casselman' <[JCasselman@RobinsKaplan.com](mailto:JCasselman@RobinsKaplan.com)>; 'Bonk, Cameron' <[Cameron.Bonk@weil.com](mailto:Cameron.Bonk@weil.com)>; 'Bradley Love' <[Bradley.Love@btlaw.com](mailto:Bradley.Love@btlaw.com)>; 'Elliot.Weingarten@stblaw.com' <[Elliot.Weingarten@stblaw.com](mailto:Elliot.Weingarten@stblaw.com)>; 'Justina K. Sessions' <[JSessions@kvn.com](mailto:JSessions@kvn.com)>; 'Trager, Lara' <[Lara.Trager@weil.com](mailto:Lara.Trager@weil.com)>; 'Ciolino Dawn L.' <[dlciolino@abbottnicholson.com](mailto:dlciolino@abbottnicholson.com)>; 'Daniel Purcell' <[DPurcell@KVN.com](mailto:DPurcell@KVN.com)>; Raiter, Shawn <[sraiter@larsonking.com](mailto:sraiter@larsonking.com)>; Burks, Laurie <[lburks@larsonking.com](mailto:lburks@larsonking.com)>

**Subject:** RE: Honda Objection

I concur in this suggestion as to Antonio. Please implement as soon as possible.

**Gene J. Esshaki**



Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.

300 River Place, Suite 3000

Detroit, MI 48207-4225

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ME.

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---

**From:** Vicky Romanenko [<mailto:Vicky@cuneolaw.com>]

**Sent:** Friday, February 17, 2017 1:35 PM

**To:** Eshshaki, Gene J.

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WShotzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie

**Subject:** RE: Honda Objection

Your Honor,

Based on the objections, we understand that Highly Confidential treatment will satisfy Earnhardt, Waikem and Turner, who have already stated what concerns them is public disclosure of their information and disclosure to other dealerships and/or consumers. We believe that is sufficient for them and nothing further is needed.

That leaves Antonino, who appears to have objected completely. We would suggest a letter to Antonino stating that the data will be produced as Highly Confidential and not made public. We suggest that such a letter come from all Serving Parties.

---

**From:** Eshshaki, Gene J. [<mailto:gjesshaki@abbottnicholson.com>]

**Sent:** Friday, February 17, 2017 1:29 PM

**To:** Vicky Romanenko

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WShotzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie

**Subject:** RE: Honda Objection

I suggest that Plaintiffs and Defendants jointly approach the objecting dealers and indicate that the previously issued protective order will extend to the information requested and see if this is sufficient for the dealers to produce. See Statement Concerning Earnhardt Objection Docket No.1647.

Gene J. Eshshaki





Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.

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---

**From:** Vicky Romanenko [<mailto:Vicky@cuneolaw.com>]

**Sent:** Friday, February 17, 2017 12:26 PM

**To:** Esshaki, Gene J.

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WShotzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie

**Subject:** RE: Honda Objection

Dear Special Master Esshaki,

We had an exchange on Monday regarding the third-party Honda dealers' objections, but we have not heard from End-Payers and Defendants since then. On Tuesday, End-Payers and Defendants filed a statement with the Court indicating that they would file their responses to the third-party dealers' letters with the Court.

We do not agree that these objections are before the Court. Your Honor has not yet issued a ruling on them. These dealers' objections are before Your Honor for the first time and are thus not yet ready for an appeal to the Judge. The Court's function, under the Order Appointing a Master, is to review Your Honor's orders. But for an order to be ripe for review, it must first be entered by Your Honor. The provision in the Order Appointing a Master contemplates review by the Court solely as an appellate function, meaning that the Court does not opine on a discovery issue until Your Honor has done so. Given that Your Honor has not stated your views on these third-party dealers' letters, the Court cannot make a determination regarding Your Honor's decision about them under Fed. R. Civ. P. 53(f), and, in turn, the Order Appointing a Master.



**From:** Esshaki, Gene J. [<mailto:gjessshaki@abbottnicholson.com>]

**Sent:** Monday, February 13, 2017 1:28 PM

**To:** Vicky Romanenko

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WSholtzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie

**Subject:** RE: Honda Objection

Can the parties work out a stipulated order to address the concerns of these third party dealers as suggested by Ms. Romanenko?

**Gene J. Esshaki**



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We are not authorized to enter into any binding agreement on behalf of any of our clients. If this communication contains any settlement proposal, it is for discussion purposes only and does not constitute an offer on behalf of us or any of our clients, and cannot create a contract or legally binding agreement. Any settlement of any matter requires the signature of an authorized representative of our client (other than Abbott Nicholson, P.C.) on final definitive documents which have been approved in accordance with our client's procedures.

**From:** Vicky Romanenko [<mailto:Vicky@cuneolaw.com>]

**Sent:** Monday, February 13, 2017 12:33 PM

**To:** Esshaki, Gene J.

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WSholtzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; Ciolino

Dawn L.; 'Daniel Purcell'; Raiter, Shawn; Burks, Laurie

**Subject:** RE: Honda Objection

Dear Special Master Esshaki,

Re-attached to this email are the automobile dealership objections from third-party dealerships, to the production by Honda of Honda dealers' DMS data. We believe that these dealerships' concerns should be taken into account.

We believe that these dealers' data, if produced, should be ordered to be treated as Highly Confidential under the protective order, filed under seal, not provided to anyone outside the litigation, not used outside the litigation, and not shown to any other dealerships.

---

**From:** Burks, Laurie [<mailto:lburks@larsonking.com>]

**Sent:** Monday, January 30, 2017 1:11 PM

**To:** 'gjesshaki@abbottnicholson.com'

**Cc:** 'Jackie Taylor'; 'Emily Luthy'; 'Millicent Lundburg'; 'rlinkin@dwmrlaw.com'; 'Ian A. Kanig'; 'Hemlock, Adam'; 'Ronnie Spiegel'; 'Demetrius Lambrinos'; 'Steve Williams'; 'AEllis@stblaw.com'; 'Patrick.Carome@wilmerhale.com'; 'Steven Cherry'; 'klein@butzel.com'; 'Asmedley@winston.com'; 'Novison, Heather'; 'Trey Nicoud'; 'JAmato@winston.com'; 'WSholtzbarger@duanemorris.com'; 'heather.choi@bakerbotts.com'; 'Sloane Kuney Rosenthal'; Evelyn Li; Vicky Romanenko; 'Jill S. Casselman'; 'Bonk, Cameron'; 'Bradley Love'; 'Elliot.Weingarten@stblaw.com'; 'Justina K. Sessions'; 'Trager, Lara'; 'Ciolino Dawn L.'; 'Daniel Purcell'; Raiter, Shawn

**Subject:** Honda Objection

Dear Special Master Esshaki:

Enclosed you will find communication we received from the Waikem Honda dealer. We will file this via ECF in the MDL master file.

Best regards,

Shawn

---

**SHAWN M. RAITER**



**Larson • King, LLP**

30 East Seventh Street • Suite 2800

St. Paul, MN 55101

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